IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 285 OF 2007
WITH
CIVIL APPLICATION NO. 321 OF 2007

Sou. Ratnamala Shivaji Sawant ..Appellants

Vs.

1. Laxman Ganpati Sawant and ors. ..Respondents

Mr. R.V. Bansode i/by Kiran Nikam for appellants.

CORAM: B.H. MARLAPALLE, J.

Date : June 26, 2007.

P.C.:

1. Heard the learned counsel for the appellant. This second appeal arises from the decree passed by the learned III Joint Civil Judge, J.D., at Satara on 1/11/2002 in RCS No. 369 of 1995 and confirmed in Regular Civil Appeal No. 32 of 2003 by the learned 1st Ad-hoc Additional District Judge at Satara vide his Judgment and Order dated 2/9/2006.

2. The present respondent no.1 filed RCS No. 369

of 1995 impleading present appellant as defendant no.1, respondent nos.2 and 3 as defendant nos.2 and 3. The suit was filed for perpetual injunction and recovery of possession along with damages from the defendant no.1 under the provisions of the Specific Relief Act, 1963. The suit property is a two storeyed house located at City Survey No. 1216 having an area of 1069.8 sq.mtr., Limbe, Taluka and District - Satara. The plaintiff has a son by name Dattatraya. He is married to Vijaya. Defendant no.3 was the tenant in the portion of the suit house (4 Khan). The plaintiff had taken steps to record the names of his two wives, daughter-in-law and grand daughters in respect of the suit property and he submitted that he did not transfer the ownership. The daughter-in-law, in turn, signed an agreement for sale in respect of the suit property with defendant nos.1 and 2 and when they started talking about taking forcible possession, the plaintiff issued notice dated 16/5/1995 and finally he approached the trial court for injunction and possession.

3. Defendant Nos.1 and 2 contended that the suit property was sold to them by the plaintiff and though the sale transaction was between the daughter-in-law and the grand-daughters, the plaintiff was a consenting party to the transaction. They also alleged that it was the plaintiff who had accepted part of the consideration. They denied that at any point of time they had taken forcible possession of the suit house. The trial court on assessment of the evidence of both the parties and their rival submissions held that the plaintiff was the owner of the suit property, the defendants had unauthorisedly occupied the same (part of the suit property) and the plaintiff was entitled to claim possession of the occupied portion from the defendants. However, the plaintiff's prayer for perpetual injunction against the defendants as well as prayer for monetary injunction against defendant no.1 was turned down by the trial court. The decree passed by the trial court reads as under:-

> ". The defendant No.1 and 2 do deliver the vacant possession of the part of the suit

property more particularly described in para 10A of the plaint to the plaintiff within the period of six months from the date of the order.

. Separate enquiry be held about amount of compensation under Order 20 Rule 12(b) of the Civil Procedure Code as the plaintiff is entitled to get amount of compensation from the defendant No.1 and 2 from 7/10/95 till recovery of possession."

4. The Lower Appellate Court agreed with the findings recorded by the trial court on the issue of ownership of the suit property of the plaintiff as well as the unauthorised occupation of the defendants over the portion of the suit property. It further held that the decree passed by the trial court was not perverse or illegal.

5. The plaintiff had two wives Janabai and Bhagirathibai and had two daughters who were married and they have been residing separately in their

matrimonial homes. There was nothing on record to show that the partition of the dwelling house between the plaintiff, his wives, son, daughters and daughter-in-law/grand-daughters was effected at any time and, therefore, the oral partition pleaded by the defendants was discarded. Document at Exh.7 indicated that the suit house was exclusively recorded in the name of the original plaintiff and the subsequent entries were based on the sale deeds created by Bhagirathibai and Vijaya on behalf of the minor grand-daughters Rani and Jayashri. The original application submitted by the plaintiff to the Sarpanch of the Grampanchayat with the copy of necessary resolution passed by the Committee was not produced to prove the legality of the entries made in the name of Bhagirathibai and Vijaya. Thus the entire case of the defendants was based on the oral evidence of the Ratnamala Shivaji Sawant and her witnesses Shripati Ganpati Jadhav, Popat Bajirao Jadhav, Maruti Valba Barkade, Balkrishna Shankar Barkade and Dada Gangaram Sawant (Exhs. 68, 69, 71, 79, 80 and 81). Original sale deeds were not produced on record. The agreement for sale photostat copy was not exhibited and it does

not show even otherwise that the plaintiff was a consenting party to the same. The agreement for sale has not been registered. The daughter-in-law was not a coparcener of the plaintiff's family and the suit house even otherwise on partition could be equally divided between the plaintiff and his son Dattatraya. The sale transaction relied upon by the defendants was claimed to be between the daughter-in-law and the defendants. Under these circumstances, both the courts below were right in holding that there was no title the defendants had in law over the suit house (part) and, therefore, their possession over the same was illegal. These concurrent findings recorded by both the courts below are findings of fact and, therefore, no substantial question of law arises for consideration in this second appeal.

6. Hence, the second appeal is hereby dismissed in limine.

7. Civil Application No. 321 of 2007 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)